

STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: Merger of Manchester Health Services)
With VNA & Hospice of the Southwest) Docket No. GMCB-008-17con
Region, Inc.)
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DECISION, ORDER, AND CERTIFICATE OF NEED

Introduction

On March 28, 2017, the Green Mountain Care Board received a Letter of Intent and Request for Emergency Review from the VNA & Hospice of the Southwest Region, Inc. (VNA, or the applicant) to expand its service area by merging with Manchester Health Services (MHS), which is incurring significant losses and is unable to obtain a line of credit. The Board denied the request for emergency review, but agreed that expedited review is appropriate based on the circumstances.

For the reasons outlined below and subject to the conditions contained herein, we approve the application.

Jurisdiction

The Board has jurisdiction over this matter pursuant to 18 V.S.A. § 9434 (a) (3) (certificate of need required for offering of home health care service, or transfer of ownership interest of 50 percent or more of health care facility other than a hospital).

Findings of Fact

1. The VNA is the designated home health agency for Rutland County and for the Bennington County towns of Bennington, Dorset, North Bennington, Pownal, Rupert, Shaftsbury, Woodford and Glastenbury. As such, the VNA is required to provide medically necessary home health and hospice services to all residents regardless of an individual's ability to pay, and to subsidize a wide variety of state and community sponsored programs to residents in its service area. Application (App.) at 1.

2. Since 1942, MHS has provided home health services to the towns of Manchester, Sunderland, Arlington and Sandgate. Like the VNA, MHS is required to provide medically necessary home health and hospice services to all residents regardless of an individual's ability to pay, and to subsidize a wide variety of state and community sponsored programs to residents in its designated service area. App. at 1.

3. MHS is struggling financially and holds no reserves. In fiscal years 2015 and 2016, MHS incurred losses of \$432,645 and \$246,499 respectively. For the month of January 2017, MHS reported losses of approximately \$1,000 per day, for a total monthly loss of \$32,095. Given its poor financial position, MHS has not been able to secure a line of credit. App. at 2.

4. MHS's financial losses result in large part from the cumulative effect of regulatory and reimbursement changes, including cuts in Medicare reimbursements for home health agencies averaging 2.3% annually, increasing administrative requirements, and inadequate Medicaid reimbursements for services. App. at 2.

5. In March 2017, the VNA and MHS, by action of their governing boards, signed a Memorandum of Understanding (MOU) to merge the two organizations. The merger would ensure that a full array of services, including but not limited to nursing, licensed nursing aides, physical, speech and occupational therapies, medical social work and certified hospice services, would continue to be available in the towns now served by MHS. App. at 1.

6. The MOU provides that MHS will have two voting members on the VNA's Board of Directors, that VNA will lease MHS's present office building for two years, and that VNA will implement the same electronic record system for MHS that VNA uses for administrative, clinical, intakes, patient and personnel scheduling, point of care, payroll and billing, so that the merged organization is fully integrated. App. at 1-2.

7. The Commissioner of the Department of Disabilities, Aging and Independent Living (DAIL) has submitted a letter supporting the proposed merger. DAIL characterizes the VNA as a well-run organization that consistently meets the needs of its clients. According to DAIL, allowing the merger will ensure that the full range of home health services will continue to be available to residents of Manchester, Sunderland and Sandgate. DAIL Letter of Support (April 7, 2017).

8. The VNA is in a very strong financial and organizational position to assume responsibility for MHS and its service area. VNA's balance sheet and overall margins have averaged 3.71% over the past nine years. VNA has 192 days of cash and investments on hand, and 43 days outstanding in accounts receivable, one of the lowest compared to its peers. Notwithstanding decreased funding, the VNA has experienced growth in assets from \$3.7 in 2003 to its current \$14 million. App. at 3.

9. The total cost for the project is \$200,002 which includes \$175,000 for implementation of the electronic record system, \$2,000 for lease of the building and \$25,000 for administrative expenses and permits. App. at Table 1, *Project Costs*. App. at 6.

Conclusions of Law

The applicant initially requested that the Board issue an emergency CON authorizing the merger of the VNA with MHS, based on the gravity of MHS's financial situation. Though the Board initially denied emergency review, we recognize that this CON must issue quickly and on

an expedited basis, as MHS's solvency continues to deteriorate. We therefore approve the application and issue this CON.

Vermont law outlines eight criteria an applicant must meet before a CON will issue. First, the application must be consistent with the Health Resource Allocation Plan (HRAP), which identifies needs in Vermont's health care system, resources to address those needs, and priorities for addressing them on a statewide basis. 18 V.S.A. § 9437(1). We find that this project is consistent with the relevant HRAP standards and therefore satisfies the first criterion. *See* Standard 5.6 (Home health agencies must have "financial depth and technical skill" to provide mandated patient services); Standard 5.7 (DAIL must provide letter in support); Standard 5.9 (financial impact of the project is reasonable).

We next conclude that the applicant has satisfied the second criterion by demonstrating that the cost of the project is reasonable and sustainable, that it will not increase costs of care, and that less expensive alternatives are not available or appropriate. 18 V.S.A. § 9437(2). The costs resulting from the merger of the two entities, other than the cost to implement a compatible electronic scheduling and records system at MHS, are expenses that MHS would have incurred simply to continue its operations (*e.g.* lease payments) were the merger not approved. Finding of Fact (Finding) ¶ 9. The applicant has shown that it can sustain these costs; it has been able to remain financially strong despite regulatory changes and obstacles that have negatively impacted MHS. Finding ¶ 8. The cost of care will not increase as a result of the project; by providing home health care in the community, more expensive hospital or nursing home costs can be avoided. In addition, merging the two entities, each of which provide the same services, creates administrative and operational efficiencies. There are no appropriate alternatives readily available; the applicant has stepped forward prior to an impending crisis, and can provide an immediate solution that will keep MHS in operation, albeit as a subsumed entity within the ambit of the VNA. We thus conclude that the second criterion is met.

We also conclude that the applicant has met the third criterion under which it must demonstrate that there is an "identifiable, existing, or reasonably anticipated need" for the project. 18 V.S.A. § 9437(3). Since 1942, MHS has provided essential health care services—including medically necessary home and hospice care—to Vermonters in the towns of Manchester, Sunderland, Arlington and Sandgate. Findings ¶¶ 2, 3. If it were to cease operations entirely, Vermonters in the towns it serves would lose access to critical services that are in many cases required by law. We find there is an indisputable need for this project, and therefore easily find that the applicant has satisfied this criterion.

The applicant has further demonstrated that it has met the fourth criterion. The project will improve the quality of health care, and will provide greater access, by ensuring that there is no interruption in needed services. 18 V.S.A. § 9437(4) (project must improve the quality of health care or provide greater access for Vermonters, or both). We additionally find no undue impact on the services currently offered by the applicant, which has proven to be a financially and operationally adept home health agency. 18 V.S.A. § 9437 (5) (project cannot have undue adverse impact on other services provided by applicant).

Based on all the reasons discussed above, we find that this project serves the public good, satisfying the sixth criterion. And to the extent the final two criteria are applicable, we conclude that they are satisfied. *See* 18 V.S.A. § 9437(7) (there must be adequate consideration of availability of transportation); § 9437(8) (criterion limited to information technology projects).

Based on the above, we approve the applicant's request for a Certificate of Need subject to the conditions outlined in below.

CERTIFICATE OF NEED AND CONDITIONS

The Board shall issue a Certificate of Need to the applicant, subject to the following terms and conditions:

- A. The applicant shall comply with the scope of the project as described in the application and other materials it has submitted to the Board relevant to this project. This Certificate of Need is limited to the project and activities described therein.
- B. The project as described in the Application shall be fully implemented within one-hundred and twenty (120) days of the date of this Certificate of Need or the Certificate of Need shall become invalid and deemed revoked.
- C. Noncompliance with any provision of this Certificate of Need or applicable ordinances, rules, laws and regulations shall constitute a violation of this Certificate of Need and may be cause for enforcement action pursuant to 18 V.S.A. §§ 9445, 9374(i), and any other applicable law.
- D. This Certificate of Need is not transferable or assignable and is issued only for the premises and entity named in the Application.
- E. If the applicant contemplates or becomes aware of a potential or actual nonmaterial change, as defined in 18 V.S.A. § 9432(12), or a material change as defined in 18 V.S.A. § 9432(11), to the scope or cost of the project described in its Application and as designated in this Certificate of Need, it shall file a notice of such change immediately with the Board. The Board shall review the proposed change and advise the applicant whether the proposed change is subject to review.
- F. The applicant shall file two implementation reports with the Board at three-month intervals, the first of which shall be filed three months after the date of this Certificate of Need. The implementation reports shall include information and analysis demonstrating that the project is in conformance with the scope as described in the Application, and must identify any changes to the financing of the project.
- G. The Board may, after notice and an opportunity to be heard, make such further orders as are necessary or desirable to accomplish the purposes of this Certificate of Need, and to ensure compliance with the terms and conditions of this Certificate of Need.

- H. All reports, notices, forms, information or submissions of any kind required to be submitted to the Board as a condition of this Certificate of Need shall be signed by the applicant and verified by the chief executive officer, or by his or her designated representative.
- I. The conditions and requirements contained in this Certificate of Need shall remain in effect for the duration of the reporting period defined in paragraph F, above.

SO ORDERED.

Dated: April 21, 2017 at Montpelier, Vermont

s/ Cornelius Hogan)
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s/ Jessica Holmes)
)
s/ Robin Lunge)

GREEN MOUNTAIN
CARE BOARD
OF VERMONT

Filed: April 21, 2017